

Contract Specifications

Tablet Computers, Third Party Peripherals and Value Added Services

Contract Number: 15-20454-410

Provider: Paragon Development Systems (PDS)

UPDATES: June, 22, 2005

Contract extended from July 1, 2005 through June 30, 2006

Updated pricing and specifications are listed on the Desktop Price Sheet

Full specifications are attached to the contract page on Vendornet

Effective Date: May 10, 2004

Contract Term: May 10, 2004 through June 30, 2005

Replaces the following contracts:

15-39100-101: WSCA Microcomputer Contract—Hewlett Packard/Compaq

15-39100-102: WSCA Microcomputer Contract—Dell

15-39100-103: WSCA Microcomputer Contract—IBM

15-39100-104: WSCA Microcomputer Contract—Gateway

These WSCA contracts were replaced January 1, 2005 by new contract 11-20400-500 **WSCA Personal Computer Hardware, LAN Storage, Printers and Peripherals**. This contract is available for servers for state agencies and available to the University System and local units of government in entirety. *State agencies may not use the WSCA contracts for desktop, laptops, or peripherals. State agencies may continue to use these contracts for services that are being provided to existing equipment. All equipment purchased through this contract should be serviced by Paragon Development Systems*

15-39100-200: Intel Microcomputers and Services—IBM and Gateway

15-39100-205: Intel Microcomputers and Services—Dell, HP and Toshiba

These contracts have expired.

As part of the state's initiative to standardize hardware the contract for **Tablet Computers, Peripherals and Value Added Services** has been awarded to Paragon Development Systems (PDS) representing Hewlett Packard. The Desktop Domain Subcommittee of the Technology Leadership Council has set standards for a tablet computer that will be the only tablet computer available to state agencies. Memory, optical drive, and hard drive upgrades are available through this contract as well as services such as imaging, installation, extended warranties and asset tagging.

Attached to this document is the contract specifications and pricing for the included commodities as well as contact information.

It is expected that the tablet computer specified on this contract should meet 75 to 80% of the state's computing needs, however, a "Business Case Exception" process is available if this configuration does not meet the needs of specialized applications.

Monitors, third party peripherals, and value added services are also available through this contract.

Other contracts awarded as part of this bid process are:

15-20453-400 Desktop Computers, Third Party Peripherals and Value Added Services awarded to Insight Public Sector.

15-20454-405, Laptop Computers, Third Party Peripherals and Value Added Services awarded to Insight Public Sector.

Contact Information:

Contract Manager:

Lyman Fuson

State Bureau of Procurement

(608) 266-9796

Fax (608) 267-0600

Email lyman.fuson@doa.state.wi.us

PDS Contact Information

Jack MacKenzie

Executive Account Director - Brookfield
Outside Sales
262.641.3023 (office)
262.370.0221 (cell)
800.966-6090
262.983.2155 (fax)
gov.ed@pdspec.com

Michael Burkholder

Account Director - Madison
Outside Sales
608.246.2713 (office)
608.219.1128 (cell)
800.966-6090
608.246.2713 (fax)
gov.ed@pdspec.com

For orders or inquiries:

Dana Berner

Account Manager
Inside Sales
1823 Executive Drive
P.O. Box 128
Oconomowoc, WI 53066
262.569.5366 (office)
800.866.6090
262.569.5391 (fax)
gov.ed@pdspec.com

E-mail Ordering or Quotes:

gov.ed@pdspec.com

Jenifer Kirsch – On maternity leave until 10/1/05

Account Manager
Inside Sales
1823 Executive Drive
P.O. Box 128
Oconomowoc, WI 53066
262.569.5329 (office)
800.866.6090
262.569.5391 (fax)
gov.ed@pdspec.com

For customer service, support, and repair

Client Care

877.737.7211 (toll free)
877.737.7211 (fax)
Mon - Fri: 8:00 a.m. - 5:00 p.m. CST

Model: HP tc4200 Tablet Computer

See attached specification sheet

Hp tc4200 part number: PV984AW#ABA

Hp warranty uplift part number: U4405E

Processor: Intel Pentium M processor 750* (1.86-GHz, 533-MHz FSB, 2-MB L2 cache)

Operating System: Microsoft Windows XP Tablet PC Edition

System Memory: 512-MB 400-MHz DDR2 SDRAM (512-MB SODIMM in slot 1)

Hard Drive: 60-GB 5400 rpm

Display: 12.1-inch color TFT XGA wide viewing angle with digitizer with (1024 x 768) resolution (up to 16.7 M colors internal)

Graphics: Intel Graphics Media Accelerator 900 with up to 128 MB of shared system memory

Audio: ADI AC '97 CODEC, Line out/headphone and microphone jacks

Communications: 56K Fax/Modem, Integrated NetXtreme Gigabit PCI Express Ethernet Controller (10/100/1000 NIC)

Integrated Wireless: Intel PRO/Wireless 2200BG 802.11b/g WLAN Bluetooth

TPM Embedded Security Chip: Yes

Pointing Device: Dual pointing devices (both Pointstick and Touchpad)
Digital Eraser Pen with tether and clip

Battery: 6-cell high capacity Lithium-Ion (52Wh)

Power: External 65W adapter

Warranty: 3/3/0 (uplift using same big deal number U4405E)

Price: \$1,600.00

Commodity Code: 20454

**ATTACHMENT C
TABLET PRICE SHEETS
(Continued)**

The following are the only allowed upgrades to the base box and may be requested by the ordering agency.

	Additional Components	Price	Commodity Code
Memory	512 MB DIMM	\$140.00	20416
Power	Replacement Battery	\$90.00	20468
Docking Station		\$200.00	20468
Port Replicator		\$200.00	20468

The following services are required of the provider at the option of the ordering entity.

Extended Warranty	Additional 1 year (Total 2 year Warranty)	\$64.00
	Additional 2 year (Total 3 year Warranty)	\$91.00
Imaging Service	Install Agency Supplied Image to computer before shipment.	\$16.00
Deployment	Installation of the PC at the user's desk. Unbox, place on desk, set up hardware and cables, power up and prep for complete installation.	\$29.00
Asset Tagging	Provider will assign each tablet an electronic or physical asset tag with a unique number. The Provider will be required to use one of the three following method based on the ordering entity's choice:	2.00
	1) Supplied or Consigned Tags	\$
	2) Electronic Asset Tags in the CMOS	\$
	3) Custom box labels	\$
Asset Inventory	Supply data or link to internal asset system.	
Roll Downs	Installation of existing equipment that include imaging, unbox, set on desk, set up hardware and cables, power up and complete installation.	\$49.00
Leasing	Must be provided. Leasing information should be attached.	Yes
	Commodity Code for listed services	93921

ATTACHMENT E
Value-Added Service Price Sheet

Services Price Sheet:

Provider must provide, as a complement to the “Base Warranty Options”, preventive and predictive hardware support as well as warranty repair and replacement support. See section 10 of this RFB. This also includes providing support and assistance in complex and difficult network, operational and software problems. Pricing must be provided for all categories listed on this sheet. Bids received without pricing for all services categories may be rejected. These prices are the maximum the State will accept for services during the contract term. We reserve the right to negotiate lower prices on a project basis. The State reserves the right to negotiate mileage separately on a project basis but will pay no more than the State rate for mileage which is \$.29/mile.

<u>Service Description</u>	<u>Charge</u>	<u>Mileage</u>
Technical Support	<u>\$65/hour</u>	<u>\$.29/mile</u>
Consulting Services/ Project Management	<u>\$95/hour</u>	<u>\$.29/mile</u>
On-Site Visits:	<u>\$65/hour</u>	<u>\$.29/mile</u>
Other Service:	<u>\$115/hour</u>	<u>\$.29/mile</u>
Up Charge for areas outside a 50 mile radius of Madison and Milwaukee:	<u>\$10/hour</u>	<u>\$.29/mile</u>
Charge for rush service in areas within a 50 mile radius of Madison and Milwaukee:	<u>\$0/hour</u>	<u>\$.29/mile</u>
Charge for rush service in areas outside a 50 mile radius of Madison and Milwaukee:	<u>\$20/hour</u>	<u>\$.29/mile</u>

PERIPHERAL PRICING

Complete Pricing by part is attached to Vendornet in a separate document

Category	Brand	Discount
Monitors:		
CRT	Philips	30%
	Viewsonic	15%
	NEC	10%
LCD	Viewsonic	20%
	Samsung	20/30%
	LG	15%
	NEC	12/13%
	Philips	10/30/35%
Scanners:	Fujitsu	20%
	Cannon Panasonic Vioneer	15%
	Epson, Microtek	10%
Mice:	Belkin	30%
	Microsoft	25%
	Kensington	20%
	Logitech	15%
Keyboards:	Belkin	40%
	Kensington	25%
	Keytronic Microsoft	20%
	Logitech	15%
Portable Printers:	HP	25%
	Cannon	15%

Category	Brand	Discount
PDA's:	Viewsonic	5%
	Toshiba	5/10%
	HP NEC	8%
	Palm	10/15%
	Sony	12%
USB Drives:		
Floppy drives	Iomega Targus Sony	15%
Hard drives	Microsolutions Smartdisk Teac	5%
	Olgear Iomega	13% 15%
	Maxtor	20%
	Western Digital	30%
CD-ROM	Targus	15%
CD-R/W	Iomega Microsolutions	7%
	Plextor	15%
	TDK	20%
DVD-ROM	Buslink Sony	7%
	Targus	15%
	Microsolutions	5%
DVD-R/W	TDK	3%
	Microsolutions	5%
	Buslink	6%
	Iomega Sony	15%
Zip/Jazz	Iomega	15/20%

PDS has provided pricing for the above-mentioned items with the exception of port replicators.

TABLE OF CONTENTS

Contract Specifications 1

Tablet Computers, Peripherals and Value Added Services 1

PDS Contact Information

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TABLET PRICE SHEETS	4
VALUE-ADDED SERVICE PRICE SHEET	6
1.0 INTRODUCTION AND PURPOSE	9
4.0 PROVIDER REQUIREMENTS	10
5.0 MANUFACTURER CERTIFICATION REQUIREMENTS FOR SALES AND SERVICE	11
6.0 PROVIDER MICROCOMPUTER PRODUCTS AND TECHNICAL REQUIREMENTS	12
7.0 PRODUCT AND TECHNICAL REQUIREMENTS FOR PERIPHERALS	12
8.0 PROVIDER SUPPORT REQUIREMENTS	13
9.0 MANUFACTURER (OEM) SUPPORT REQUIREMENTS	15
10.0 VALUE-ADDED SERVICE REQUIREMENTS	16
11.0 FINANCIAL REQUIREMENTS	18
12.0 LIQUIDATED DAMAGES AND REMEDIES FOR FAILURE TO MEET REQUIREMENTS	18
13.0 ADDITIONAL TERMS AND CONDITIONS	19
STANDARDS TERMS AND CONDITIONS (DOA-3054)	22
STANDARD TERMS AND CONDITIONS FOR DATA PROCESSING	26
HARDWARE RIDER	30

1.0 INTRODUCTION AND PURPOSE

- 1.1 **Purpose of the Contract:** This document provides the specifications, conditions and terms for purchasing Desktop computers, monitors, components, and services as well as third party peripherals including monitors.
- 1.2 contract defines the requirements of the State in reference to the award of the contracts and on-going performance of the Provider(s).
- 1.3 **Definitions:** The following definitions are used throughout the contract.

Provider: Manufacturer, Dealer and / or Reseller, hereafter known as the Provider is the single entity that is responsible for providing the products and services in all aspects of the contract. The provider must have the resources, certification and the ability to provide the requirements of this RFB to the State. The Provider must be able to provide documentation and verification which support its claim of meeting contract requirements.

Original Equipment Manufacturer (Manufacturer): The manufacturer of equipment being provided to the State.

Manufacturer Certifications/Authorizations: For each microcomputer bid by the Provider, they must provide a letter from the Manufacturer, stating they are authorized to be a reseller service provider for this procurement specifically for the State of Wisconsin. There is a listing of other requirements that provide detailed information pertaining to certifications the Provider must have to submit a bid.

Components: Products that may be added to the base configuration outlined in the Specifications and are inside of the computer.

Peripherals: Products that are external devices that work outside of the computer's case and in conjunction with a computer. These products may either be part of a computer manufacturer's catalog of products or may be provided by other third-party suppliers.

Value-Added Services: Service options related to the purchase, installation and support but are not included in the base pricing.

Minority Subcontracting: The State of Wisconsin has a goal of placing five percent (5%) of its total purchasing dollars with certified minority businesses. Authority for this program is found in Wisconsin Statutes 15.107 (2), 16.75(4), and 560.036(2). The Department of Administration is committed to the promotion of minority business in the State's purchasing program.

With this procurement, the successful contractors are encouraged to purchase services from minority businesses certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development. The Wisconsin Department of Commerce will require from the successful contractors quarterly reports, submitted to the DOA Bureau of Procurement that supports the purchase of supplies or services necessary for the implementation of the contract. A list of certified minority businesses and the services they provide is available from the DOA, Office of Minority Business Programs,

(608) 267-7806.

- 1.4 Overview of Procuring Agencies:** All State of Wisconsin Executive branch agencies, as defined by State Statutes, will be required to use the State Procurement Contract that results from the Request for Bid (RFB). The same prices and services will be offered to municipalities. The provider must sign the Cooperative Purchasing Agreement identified as Attachment M. Pursuant to 16.73 Wis. Statutes. A municipality is defined as a county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district or any other public or quasi-public corporation, officer board or other body having authority to award public contracts. Wisconsin municipalities and the University System and campuses will be allowed, but not required, to purchase from the resulting contracts.
- 1.5 Education Pricing:** Any special pricing for education will be included in this contract with the notation “**for education only**”.
- 1.6 Consortium Purchasing Impact:** The 1996 Wisconsin Act 244 allows State agencies to purchase from contracts issued by other governmental entities, or participate in consortia purchases. The State Bureau of Procurement reserves the right during the contract term to permit agencies to purchase from other sources not included in current or future State contracts, if it is determined to be in the best interest of the State to do so.
- 1.7 Non- Performance:** A Provider may be eliminated from the contract for non-performance or loss of manufacturer certification, in which case the next lowest bidder for that brand will be offered the opportunity to participate.
- 1.8 Contract Period:** The contract will take effect on the date of award and shall run until June 30, 2005 with an option by mutual agreement of the State and Contractor to renew for two (2) additional one year periods.
- 1.9 Contract Termination:** The state reserves the right to terminate this contract at any time for any reason with a thirty (30) day written notification of the vendor.
- 1.10 Contract Volume:** The state does not guarantee any minimum volume on this contract. Last year the state has estimated it purchased the following:

Desktops	8,000 units
Laptops	3,000 units
Tablets	No Information Available

(No Sections 2.0 and 3.0)

4.0 PROVIDER REQUIREMENTS

- 4.1** All models must be enterprise level quality as defined Gartner Group RAS Services. Home or consumer grade equipment will not be acceptable.
- 4.2** Systems must be certified minimum **DMI 2.X** compliant.

- 4.3 Manufacturer and facility or facilities where product is manufactured, configured and tested must be an ANSI and / or ISO certified facility. Certification is required.
- 4.4 **Energy Star:** The State **requires** the use of computer equipment, which meets the Environmental Protection Agency (EPA) Energy Star requirements when available. The Energy Star Program is a voluntary agreement between an OEM and the EPA. The manufacturers covered by this procurement must agree to meet those standards as described in the EPA's Memorandum of Understanding (MOU) regarding energy use.
- 4.5 All products offered must be UL listed. Documentation required.
- 4.6 All systems must be FCC approved for commercial use. Documentation required.
- 4.7 All desktop and laptop microcomputers as well as monitors, mice and, keyboards sold with the system will be warranted for a minimum of three years. Tablets and Peripherals and Laptop batteries must carry a minimum one-year warranty. Provide documentation of standard warranty. Additional one and two year warranties must be available for desktop and laptop microcomputers.
- 4.8 All systems must have Microsoft WHQL certification: Designed for Windows XP and 2000. Include a copy of the Windows Hardware Quality Labs (WHQL) posting.
- 4.9 Provider must have the ability to accept the State of Wisconsin Purchasing Card (P-card). The State of Wisconsin has implemented a Visa Purchasing Card program for purchases up to \$5,000. Use of the Purchasing Card is at the discretion of the ordering agency. See Attachment N, Purchasing Card Information Sheet.
- 4.10 Subcontracting is allowed on this contract, however the provider is responsible and liable for the work and actions of the subcontractor.

5.0 MANUFACTURER CERTIFICATION REQUIREMENTS FOR SALES AND SERVICE

The requirements in this section apply to and must be met by the Provider. If at any time during the life of the contract manufacturer certification is rescinded, loss of certification will be automatic grounds for termination of the contract in which case the next highest bidder would be offered the contract.

- 5.1 Provider has provided documentation from each manufacturer that they meet the following certifications:
 - 5.1.1 Provider must be authorized by the manufacturer at the service level deemed necessary by the manufacturer to provide products and warranty services to the State of Wisconsin per the requirements of this bid.

- 5.1.2 Provider must be a Registered Reseller of the manufacturer and authorized by the manufacturer to sell within the State of Wisconsin.
- 5.1.3 Provider must be an Authorized Service Provider of the manufacturer to provide service within the State of Wisconsin.
- 5.1.4 Manufacturer must certify that they agree to work in partnership with the Provider to deliver the requirements stated in Section 9 of this RFB.

6.0 PROVIDER MICROCOMPUTER PRODUCTS AND TECHNICAL REQUIREMENTS

These requirements apply to the Provider unless otherwise stipulated and must be met by the Provider.

- 6.1 **Product Pricing:** Provider must provide complete pricing for the products and services listed in Attachments A, B, C, and/or D as part of its bid response. All Providers should fill out section E for Value Added Services. (See section 3.4.) For each section bid it must provide all OEM products covered by the contract and have the resources to support the products. **The State reserves the right to approve all products offered and reserves the right to reject products.** Providers must submit the complete price list in our standard format. All products are F.O.B. destination anywhere in the State of Wisconsin.
- 6.2 **Firm Pricing:** All prices must remain firm through June 30, 2005 (the first term of the contract). Any price decreases, rebates, or special programs must be extended to the state at the time of the announcement by the manufacturer during the duration of the special promotion. Prices may return to the pre-promotion level but may not exceed the original bid price.
- 6.3 **Support:** Provider must support the products they are bidding and take responsibility for timely problem resolution when it's identified that a microcomputer covered under warranty is causing a problem.
- 6.4 **Products:** See the technical requirements in Attachments A, B, C, and D.

7.0 PRODUCT AND TECHNICAL REQUIREMENTS FOR PERIPHERALS

- 7.1 **Peripherals:** Provider must offer third-party components and accessories to the State within the following guidelines:
 - 7.1.1 The State will approve all products offered and reserves the right to reject or block products. Provider must submit a complete product list in the standard format.
- 7.2 **Peripherals Pricing:** Provider has provided pricing information for third-party peripherals as listed in Attachment D. Provider has provided a catalog of prices and bid a discount off list to be applied to the catalog list. All products must include all base

warranty, transportation, insurance and shipping costs, F.O.B. destination anywhere in the State of Wisconsin.

- 7.3 Peripheral Price Changes:** The discount must remain firm during the life of the contract. Price list changes will only be made with documented increases or decreases in the price by the manufacturer and after approval by the state. Provider must provide, upon request by the State, cost information, which supports changes in pricing. Price changes will be effective on the date of announcement from the OEM. It is the Provider's responsibility to apprise the State of price changes. Invoices for goods shipped on or after the effective date of a decrease, special promotion or rebate shall reflect those changes.
- 7.4 Adding New Products:** The State will allow the Provider to add new third-party products to the contract. We also reserve the right to request that the Provider provide specific products. However, the Contract Manager must approve all new products introduced during the term of the contract. The Provider must prepare a product summary stating the need for the addition and reasonable proof that pricing is at cost plus prices under the accepted costing structure. The state also reserves the right to block offerings.
- 7.5 Support:** Provider must support the products they are offering to the State and take responsibility for problem resolution in all cases, when it's identified, that a peripheral is causing a problem with microcomputer hardware covered under warranty.

8.0 PROVIDER SUPPORT REQUIREMENTS

These requirements apply to the Provider unless otherwise stipulated and must be met by the Provider.

- 8.1** The Provider must be a **certified reseller** of the Original Equipment Manufacturer (OEM) for the hardware covered by the contract.
- 8.2** Provider included a detailed plan addressing their strategies for State and Local Government markets.
- 8.3** Provider must have a sales office with staff trained to support the bid located within **150 miles of Madison**. The staff must be available for on-site visits to State agencies. This pre-sale service will be provided at no charge to the State, and will include, but not be limited to, discussions of the following issues:
- Basic technical consulting to provide product advice based on specific requirements
 - Product updates for current offerings
 - Strategic planning sessions
- The Provider must have a minimum of two trained sales staff to support the State. The State requires that their trained sales staff be accessible through phone and email.
- 8.4** Provider must have included and must keep current the resumes of all staff, both technical and sales, which will be part of the team appointed to support the State.
- 8.5** Provider's employees that will be used at any state site must submit to a background check and submit a signed state non-disclosure form

- 8.6** Provider must provide monthly reports on the status of outstanding purchase orders.
- 8.7** Provider must have an automated order processing system. The Provider should allow the State electronic access to the system through a Web browser interface to facilitate the exchange of information for on-line purchase requests and order tracking. Ideally, these systems should permit inventory updates and support asset management requirements of agencies.
- 8.8** Provider must provide, in partnership with the OEM or independently, on-line access to technical and marketing information through a Web browser interface.
- 8.9** Provider should bar code purchase order numbers, product number and serial number on shipping cartons.
- 8.10** Provider must include serial numbers on invoices for desktops, laptops, tablets, PDAs and monitors.
- 8.11** Provider must have a system, which supports entering the State's purchase order number on packing slips.
- 8.12** Provider must be able to support custom configuration requests from State agencies resulting from a business case exception and approved by the state.
- 8.13** Provider must be a System Integrator and be in a position to provide Value-Added Services at the rates established in this RFB. The Value-Added Services are defined in Section 10.0 of the RFB. The Provider must provide the services statewide. In most cases, a Statement of Work will be agreed upon before services are performed. However, the State may request expedited delivery of these services. The Provider must be in a position to provide said services within four hours for locations within Madison and Milwaukee.
- 8.14** The Provider must be willing to work in partnership with the manufacturer to provide the following base warranty requirements at no additional charge for three year on site parts and labor for desktops and laptops and one year on site parts and labor for tablets and peripherals. The State will allow for an "up charge or add-on" price to provide critical extended warranty coverage. Pricing information must be included on Attachment E—Value Added Services Price Sheet. **BASE WARRANTY SCHEDULE** *Please note: All warranties must be three year on site parts and labor for desktops and laptops and one year on site parts and labor for tablets and peripherals.*

	Standard	
	Mad/Milw 7:00 a.m. to 5:00 p.m.	Statewide 7:00 a.m. to 5:00 p.m.
On-Site Responses Times	Eight working hours	Next Day

- 8.15** Provider must provide information detailing all extended warranty options available for purchase for each item bid. State agencies reserve the right to negotiate these optional services based on individual requirements. In the event an optional warranty crosses contract termination periods, the Provider must continue to support the arrangement or work in partnership with the manufacturer or new Provider to ensure transparent coverage to the State.

- 8.16** Provider, in partnership with the manufacturer, must supply a loaner of equal or greater value when warranty repairs are not made per the “Base Warranty Schedule” defined in section 9.4.
- 8.17** Provider must maintain a stock of parts sufficient to effect normal repair within the “Base Warranty Requirements” defined in section 9.4.
- 8.18** Provider must provide a daily Call Report on a monthly basis, detailing all service calls per agency. The report must detail the call time, response time, resolution time, agency, agency contact and the escalation process used to provide resolution to the incident.
- 8.19** Provider must, in partnership with the manufacturer, supply evaluation models to the State. These requests must be fulfilled within 15 business days of the request unless otherwise negotiated. An agency requesting evaluation models is not required to purchase them after the evaluation has been completed.

9.0 MANUFACTURER (OEM) SUPPORT REQUIREMENTS

Providers must respond to the support requirements in this section in accordance with the instructions given in Section 2.2(k) above. The following applies to Desktops, Laptops and Tablets only. See Section 7.5 for Peripheral support.

It is the State’s expectation that these requirements apply to the OEM and that they be in compliance with them. The bidder, when not the OEM, bears sole performance responsibility as established by the Provider concept.

- 9.1** Model bid must have a life cycle minimum availability of 12 months from date of contract award.
- 9.2** OEM must provide account representatives for both sales and technical support to the State with phone and e-mail access. These representatives must be able to support agencies with product selection and provide advice on strategic directions based on individual agencies environments.
- 9.3** OEM must have in place a well-developed infrastructure and programs required to serve a variety of customer constituencies, particularly enterprises engaged in large, centralized desktop procurement and deployment initiatives. OEM must provide, as requested, inventory information about the models bid on this RFB.
- 9.4** Provider must, in partnership with the Manufacturer, provide the Base Warranty identified in the contract at no additional charge statewide. All warranty costs must include parts and labor unless otherwise indicated on Price Sheets. The State will allow for an ‘up charge or add-on’ price to provide expedited critical warranty coverage. Pricing information must be included on Attachment E- Value Added Services Price Sheets. The state will not pay mileage on warranty calls.

BASE WARRANTY SCHEDULE

Please note: All warranties must include parts and labor.

	Standard
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	Mad/Milw 7:00 a.m. to 5:00 p.m.	Statewide 7:00 a.m. to 5:00 p.m.
On-Site Responses Times	Eight working hours	Next Day

- 9.5** OEM, or in partnership with the Provider when applicable, must supply a loaner of equal or greater value when warranty repairs are not made per the “Base Warranty Schedule”.
- 9.6** OEM, or in partnership with the Provider when applicable, must maintain a stock of parts sufficient to effect normal repairs within the “Base Warranty Requirements”.
- 9.7** OEM, or in partnership with Provider when applicable, must supply evaluation models to the State. These requests must be fulfilled within fifteen business days of the request unless otherwise negotiated. An agency requesting evaluation models is not required to purchase them after the evaluation has been completed.
- 9.8** OEM must guarantee parts availability or comparable replacement components on all models for the duration of the equipment’s warranty or for two years after withdrawal of a product, whichever is longer.
- 9.9** OEM must guarantee that OEM parts be available for purchase by the State or by an authorized third party maintenance provider.
- 9.10** OEM must make technical manuals available to State service personnel and third- party maintenance providers at no more than the same price as authorized dealers. It must also offer to State personnel the same training they provide to dealer technical support providers.

10.0 VALUE-ADDED SERVICE REQUIREMENTS

Provider must provide detailed pricing for all Value-Added Services on Attachment E. These rates are viewed as maximum charges for each service. Agencies may negotiate lower rates based on specific projects. These services and rates will be factored into the bid award.

All Value-Added Services will require the completion of a “Statement of Work” which identifies the deliverables and will be negotiated in advance with service provider on an as needed basis.

All requirements in this section are mandatory.

10.1 Technical Support:

- 10.1.1** Provider must provide, at no charge, basic technical support of all PC hardware and peripherals along with any corresponding software.

10.2 Consulting Services including Project Management:

- 10.2.1** Provider must be able to provide consulting services to assist with microcomputer hardware and software integration based on the enterprise and agency requirements. Provider must understand Statewide Infrastructure and Standards and support agency efforts to migrate to those Standards. These services are considered a Value-Added service and will be bid on a project-by-project basis when needed by the agency.

10.3 Installation Services:

- 10.3.1** Provider must provide installation and rollout services statewide. These services include receiving, testing, installation and connecting systems at the user location.
- 10.3.2** Provider must provide examples and associated references for specific projects where installation services may be required over a variety of geographic locations.
- 10.3.3** Provider may be responsible for removal and/or redeployment of old equipment and the software, which resides on the hard drive.
- 10.3.4** Provider must, as requested, perform on-site visits to survey customer locations statewide, to review and understand space, electrical, safety and cabling requirements for power, voice and data lines. A formal Site Preparation survey may be requested by an agency.
- 10.3.5** Provider must provide support for planning, authorizing, registering and auditing capabilities for Microcomputer security functions. They must coordinate with agencies to provide security for equipment, log-on capabilities and synchronization support for security classes.

10.4 Asset Management and Tracking Services:

- 10.4.1** Provider must be able to provide asset tracking and management assistance for desktops, laptops, tablets, PDAs and monitors and any included software. This service could include, but not be limited to, handling warranty registration to activate the new equipment, registering of software licenses, interfacing to agency asset tracking and financial systems and automated asset tracking. Asset tracking includes applicable information tracking, order status, location, ownership and financial or cost attributes of hardware and software products.

10.5 Hardware Support:

- 10.5.1** Provider must provide, as a complement to the “Base Warranty Options”, preventive and predictive hardware support as well as warranty repair and replacement support. This also includes providing support and assistance in complex and difficult network, operational and software problems. Warranty

service management, including coordination and claims processing, is part of this additional support.

10.5.2 Provider, upon request by the State, must provide support for hardware issues. The support may require management of problems related to hardware, including warranty and service dispatch. This must be coordinated with internal agencies Help Desk and/or the Centralized Statewide Help Desk.

10.6 Value Added Services Pricing: Provider must provide pricing for all options identified on Attachment E, Value Added Services Price Sheet. Bids without complete information may be rejected. This information will be factored into the bid award.

11.0 FINANCIAL REQUIREMENTS

All requirements in this section are mandatory. The State will review the financial stability of the division or subsidiary, which is acting as Provider.

An outside firm must provide verification of these criteria. An Annual Report can be used as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm. This must reflect the most recent fiscal year view of organizations financial stability. The State reserves the right to contact the firm if questions arise.

11.1 Provider must provide documentation, which verifies they have a minimum of \$250,000 credit line with OEM when applicable. A letter from the financial institution, which will provide the financial resources for the Provider, must be included with RFB response. The credit line provided must be equal to or greater than the aggregate of brands being bid. Provider may be required to furnish documentation on quarterly basis that they have maintained this minimum requirement. The State reserves the right to contact financial institution on a quarterly basis.

11.2 Provider must provide documentation, which verifies they have a positive cash flow. The State requires at a minimum a Compiled Income Statement from a Certified Public Accounting Firm, which verifies their claim.

11.3 Provider must provide documentation, which verifies a long-term debt to equity ratio 3.4:1 or less. The Provider must provide at a minimum a Compiled Balance Sheet on the most recent fiscal year, which supports their claim. This must be from a Certified Public Accounting Firm.

12.0 LIQUIDATED DAMAGES AND REMEDIES FOR FAILURE TO MEET REQUIREMENTS

The State declares, and the Provider has acknowledged by submittal of response to the RFB that led to this contract, that the State may suffer damages due to lack of performance as to any clauses identified as a "Requirement". Since it is difficult to fix the actual damages sustained in

the event of non-performance, the State and Provider agree that the amount of damage will be determined as per Section 12.0 of the RFB. In the event of any non-performance the Provider shall pay that amount as liquidated damage and not as a penalty. Amounts due the State as liquidated damage may be deducted by the State from any money payable to Provider and any amount outstanding over and above the amounts deducted from the invoice will be promptly tendered by check from the Provider to the State. The Contract Manager must be informed, in writing, before any liquidated damages are assessed by individual agencies.

The State will notify the Provider, in writing, of any claim for liquidated damages no later than fifteen days prior to the date the State deducts such sums from money payable to Provider and, in any case, within ninety days after Provider's failure to perform in accordance with the terms of the contract. Delay in reporting such claims to Provider will void any claim for liquidated damages.

Provider shall not be liable for liquidated damages when delays arise out of cause beyond their reasonable control and without the fault or negligence of Provider.

Delays due to causes of Force Majeure or due to the responsibility of the State or other Providers of the State shall extend the time for performance on a day to day basis, but in every case the delay must be beyond the reasonable control and without fault or negligence of Provider.

12.1 Failure to meet Support Performance Requirements: If the support performance requirements are not met after ninety calendar (90) days from commencement of the service, the State shall be presumed to have sustained damage in the amount of: 10% of the service cost per day/device for each day over the ninety or \$500 maximum per day, which ever is less.

12.2 Equipment Delivery: If Provider does not deliver equipment, as promised, the contractor shall pay as liquidated damages the State may charge; \$50/day for desktops in critical situations. The State will inform the Provider when the equipment being requested is critical and that failure may cause damages to be assessed. This process may also be used when there are repeated deliveries being missed by the Provider. Changes to requested delivery dates may be made if mutually agreed upon by the State and Provider without liquidated damages being applied.

12.3 Warranty Repair Time: If Provider fails to complete warranty repairs within the next business day, the parties agree that the State shall have sustained damages in the amount of \$50/ for desktop or laptop for which warranty repairs are not completed within reasonable time. This may be applied at the State's option for each complete day that the equipment is inoperative.

13.0 ADDITIONAL TERMS AND CONDITIONS

13.1 Order Returns: The Provider shall agree to accept return of hardware products and components that have been damaged, or ordered or shipped in error for up to thirty (30) calendar days from receipt. The State will pay only the return shipping cost for products ordered in error and the Provider will pay shipping costs for products damaged or shipped in error. There will be no restocking fee charged if the products are returned

within the thirty days properly packaged in their original packaging. Items returned after the thirty (30) calendar day period, based on date of return notification, but undamaged, may be subject to a restocking fee of up to 10%. Provider is encouraged to accept items, which have been damaged after the thirty day period, however those returns may be subject to additional charges. Provider must explain return procedures in detail in bid response.

13.2 New and Deleted Products: New products as announced by the manufacturers may be added to the contract at the discretion of the Contract Manager. Products will be limited to those, which fall into the product categories identified in the technical sections of this RFB. No product will be added to the contract without the State's prior approval. It is the Provider's responsibility to notify the State of new or discontinued items and changes in pricing.

13.3 Pre-Sale Demonstrations: Provider must provide, upon request by a State Agency, models for demonstration or evaluation purposes. Products being delivered for testing must be delivered to the State's site within fifteen business days, unless other arrangements have been made with the State Agency. Failure to perform may result in disqualification from the contract.

13.4 Delivery: All products provided through this contract must be shipped F.O.B. destination to the State's site within the State of Wisconsin. Prices are to include all packing, transportation and insurance charges.

The Provider must commit to providing delivery within fifteen (15) calendar days after receipt of a purchase order of orders of 10 units or less. Otherwise, state agencies will establish delivery dates to meet individual requirements. If there is a documented back order due to the manufacturer the Provider must notify the state within 48 hours. It is the Provider's responsibility to respond with a firm delivery date subject to approval from the ordering agency. Failure to provide product deliveries in a timely manner may result in the invocation of liquidated damages as per section 12.2.1 or cancellation of individual orders. Repeated failure to notify agencies of back order situations may result in disqualification from the contract.

13.5 Hardware and Software Documentation: Provider must provide documentation and manuals for hardware and software purchased. If providing bundled operating system or communications software, manuals must be included with each shipment unless otherwise arranged by the State.

13.6 New Equipment: The State will only accept new equipment as part of this contract. During the last half of the warranty period only, the Provider, at its discretion, may supply factory-refurbished units as replacements for defective units. These units will be subject to all of the same standards as new units and must be warranted.

13.7 Reports: Providers must furnish monthly/quarterly reports to the State. The reports must include, but are not limited to the number of machines sold by manufacturers part number, make model, price, invoice number, order date, ship date, delivery date, total sales by line item, total sales per month by agency, municipality, or school district. Also, the Provider may be required to furnish total dollar volume of business done with local units of government and other agencies. In addition, Providers will be required to

furnish cost verification upon request. Contractor may also be required to furnish reports pertaining to warranty service calls on specific products along with make and model. The requested report information may include but is not limited to: reported problem description, contact description, contact name, date of call, problem resolution and date of resolution. Web browser access to these data is required with the option for state agencies to download the data.

ATTACHMENT I

STANDARDS TERMS AND CONDITIONS (DOA-3054)

- 1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.
- 3.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.
- 4.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.
- 5.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 6.0 PRICING AND DISCOUNT:** The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.
- 6.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
- 6.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industry wide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.
- 6.3** In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
- 7.0 UNFAIR SALES ACT:** Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.
- 8.0 ACCEPTANCE-REJECTION:** The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.
- Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.
- 9.0 METHOD OF AWARD:** Award shall be made to the lowest responsible, responsive bidder unless otherwise specified.
- 10.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 11.0 PAYMENT TERMS AND INVOICING:** The State of Wisconsin normally will pay properly submitted provider invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

A good faith dispute creates an exception to prompt payment.

- 12.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

- 13.0 GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.

- 14.0 ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

- 15.0 APPLICABLE LAW:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

- 16.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

- 17.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.

- 18.0 WORK CENTER CRITERIA:** A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

- 19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

19.1 Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

19.2 The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

19.3 Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

- 20.0 PATENT INFRINGEMENT:** The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor

covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

21.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code, the Rules of the Industrial Commission on Safety, and all applicable OSHA Standards.

22.0 WARRANTY: Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.

23.0 INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

23.1 Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

23.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

23.3 The state reserves the right to require higher or lower limits where warranted.

24.0 CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to non appropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

25.0 PROVIDER TAX DELINQUENCY: Providers who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

26.0 PUBLIC RECORDS ACCESS: It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.

Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.

27.0 PROPRIETARY INFORMATION: Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the provider's responsibility to defend the determination in the event of an appeal or litigation.

27.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.

27.2 Any material submitted by the provider in response to this request that the provider considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

28.0 DISCLOSURE: If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

- 29.0 RECYCLED MATERIALS:** The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.
- 30.0 MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
- 31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.
- 32.0 HOLD HARMLESS:** The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.
- 33.0 FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 266-3590.
- 34.0 WORK CENTER PROGRAM:** The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

ATTACHMENT J
STATE OF WISCONSIN
STANDARD TERMS AND CONDITIONS FOR DATA PROCESSING

- 1.0 WISCONSIN DEPT. OF ADMINISTRATION FORM AD-P-11
- 2.0 AMENDMENTS
- 3.0 CONFIDENTIALITY
- 4.0 CONSENT TO BREACH NOT WAIVER
- 5.0 FORCE MAJEURE
- 6.0 FOREIGN CORPORATION
- 7.0 INDEMNIFICATION
- 8.0 INDEPENDENT CAPACITY OF CONTRACTOR
- 9.0 NEWS RELEASES
- 10.0 NOTICES
- 11.0 ORDERING (additional terms)
- 12.0 PRICING AND DISCOUNT (additional terms)
- 13.0 PRIME PROVIDER RESPONSIBILITY
- 14.0 SITE RULES AND REGULATIONS
- 15.0 WARRANTY (additional terms)

STATEMENT OF PURPOSE: The Standard Terms and Conditions are intended to provide for general business terms that will govern the Data Processing Agreement.

STATE OF WISCONSIN

STANDARD TERMS AND CONDITIONS FOR DATA PROCESSING

- 1.0 DOA-3054 contains Standard Terms and Conditions, which apply to all procurements. The remainder of the terms and conditions reflect additional requirements for all Data Processing procurements as well as additional language to some terms found in AD-P-11.
- 2.0 AMENDMENTS: Unless specifically prohibited by the solicitation document which was the basis for this Agreement, this Agreement may be amended, in writing, by mutual consent of the parties with the same degree of formality evidenced in this Agreement.
- 3.0 CONFIDENTIALITY: Contractor acknowledges that some of the data it may become privy to in the performance of this Agreement is of a confidential nature and Contractor shall make all reasonable efforts to insure that no such confidential information is disseminated by it or its employees.

Contractor agrees to observe complete confidentiality with respect to all aspects of any confidential information, proprietary data and/or trade secrets and any parts thereof, whether such contents are the State's or other manufacturer's, provider's or distributor's whereby Contractor or any Contractor's personnel may gain access while engaged by the State or while on State premises. The restrictions herein shall survive the termination of this Agreement for any reason and shall continue in full force and effect and shall be binding upon the Contractor or its agents, employees, successors, assigns, subcontractors, or any party claiming an interest in this Agreement on behalf of or under the rights of Contractor following any termination. Contractor shall advise all Contractor's agents, employees, successors, assigns and subcontractors which are engaged by the State of the restrictions, present and continuing, set forth herein. Contractor shall defend and incur all costs, if any, for actions which arise as a result of noncompliance by Contractor, his agents, employees, successors, assigns and subcontractors regarding the restrictions herein.

- 4.0 CONSENT TO BREACH NOT WAIVER: The waiver by the State of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Likewise, such a waiver shall not establish a course of performance between the parties contradictory to the terms of this Agreement.
- 5.0 FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.
- 6.0 FOREIGN CORPORATION: A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement must possess a certificate of authority from the Wisconsin Secretary of State and must have and continuously maintain a registered resident agent, and otherwise conform to all requirements of Chapter 180, Wisconsin Statutes, relating to a foreign corporation. Any foreign corporation, which desires to apply for a certificate of authority, should contact the Office of the Secretary of State, Division of Corporations, P. O. Box 7846, Madison, WI 53707; telephone (608) 266-3590.

- 7.0 INDEMNIFICATION: Contractor indemnifies and holds harmless the State and its agents and employees from and against all suits, claims, damages, judgments, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of the work, which includes all labor, material, and equipment required to produce the commodity, construction, and/or service required by this Agreement, provided that any such claim, damage, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission of the Contractor, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- 8.0 INDEPENDENT CAPACITY OF CONTRACTOR: The parties hereto agree that Contractor, its officers, agents and employees, in the performance of this Agreement, shall act in the capacity of an independent Contractor and not as an officer, employee or agent of the State. Contractor agrees to take such steps as may be necessary to ensure that each subcontractor of Contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State.
- 9.0 NEWS RELEASES: Contractor agrees that any news releases by Contractor related to this Agreement or the services, study data or project to which it relates will not be made without the prior written consent of the State.
- 10.0 NOTICES: All notices provided for herein shall be deemed duly given upon delivery if delivered by hand, or upon three (3) days after posting if sent by certified mail, return receipt requested. Notice shall be given to the persons(s) or official(s) who are the signatories of this Agreement at the address shown on the State of Wisconsin DATA PROCESSING AGREEMENT form.
- 11.0 ORDERING: (additional terms) Official State purchase orders shall be placed directly to Contractor by authorized purchase order writing agencies. In addition, the State may give notice to Contractor that a third party or third parties may write purchase orders to Contractor under the terms and conditions of this Agreement, provided that any such third parties have agreed to accept responsibility for the State's obligations under this Agreement, and, further provided, that any such third parties may only write purchase orders to Contractor under this Agreement in order to fulfill those third parties' contractual obligations to the State. No other purchase orders are authorized.
- 12.0 PRICING AND DISCOUNT: (additional terms)
- 12.1 Any increase proposed should be submitted to the State ninety (90) calendar days before the renewal date of this Agreement, and shall be limited to fully documented cost increases, which Contractor shall demonstrate to be applicable to all State or local governmental agencies in all States. Prices may not be increased during the first year of the contract.
- 12.2 Any element of recurring or nonrecurring cost, which must be borne by the State, has been identified by Contractor in their response to the State's solicitation document. This includes, but is not limited to hardware, maintenance, cabling, system engineering, manuals and documentation, education, demonstration, consultation, shipping charges, installation costs, testing, and manufacturer supplied programs. All items of cost for compliance with the State's requirements are shown in Contractor's price as contained

in their response to the State's solicitation document which is attached by reference to this Agreement.

- 12.3 In those cases where Federal funding is used for acquisition of products and/or services, interest cannot be paid under any installment purchase or lease/purchase arrangement entered into as a part of this Agreement.
- 12.4 If Contractor reduces its published purchase price, rental or maintenance rates or increases their purchase option credit percentage for any items which are the subject of this Agreement during the term of this Agreement, the State shall have the immediate benefit of such lower price, or percentage increases on any such items for which Acceptance Testing under any Riders to this Agreement has not been completed.
- 12.5 Contractor shall convey to the State good title to purchased items free and clear of all liens, pledges, mortgages, encumbrances or other security interest.
- 13.0 **PRIME PROVIDER RESPONSIBILITY:** Contractor is the prime provider. A prime provider is the provider who provides a service and receives a payment for that service. The State considers the prime provider to be the sole point of contact with regard to contractual matters, including the performance of services and the payment of any and all charges resulting from contractual obligations. Contractor may, with prior written permission from the State, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations, provided, that in no event shall the existence of the subcontract operate to release or reduce the liability of Contractor to the State for any breach in the performance of Contractor's duties. Contractor agrees that all subcontractors shall be agents of Contractor and Contractor agrees to hold the State harmless hereunder for any loss or damage of any kind occasioned by the acts or omissions of Contractor's subcontractors, their agents or employees.
- The State may enter into contracts with third parties for the purposes of financing its purchases under this Agreement or of maintaining any equipment purchased under this Agreement. Contractor agrees to recognize such contracts upon notice from the State. Contractor acknowledges that this Agreement does not provide an exclusive commitment by the State to acquire all products and services offered in the Contractor's response to the State's solicitation document from Contractor.
- 14.0 **SITE RULES AND REGULATIONS:** Contractor shall use its best efforts to assure that its employees and agents, while on the State's premises or in the presence of State employees, shall comply with the State's work rules and regulations applicable to the work site. Neither party shall require waivers or releases of any personal rights from representatives of the other in connection with visits to its premises and both parties agree that no such releases or waivers shall be pleaded by them in any action or proceeding.
- 15.0 **WARRANTY:** (additional terms)
Contractor further warrants that the items furnished by Contractor to the State will perform as described by Contractor in its response to the State's solicitation document as attached hereto.

**ATTACHMENT K
STATE OF WISCONSIN
HARDWARE RIDER**

- 1.0 ACCEPTANCE/STANDARD OF PERFORMANCE
- 2.0 ACCESS TO EQUIPMENT
- 3.0 DOCUMENTATION AND OPERATING MANUALS
- 4.0 EMERGENCY EQUIPMENT
- 5.0 ENGINEERING CHANGES AND/OR FIELD MODIFICATIONS
- 6.0 INSTALLATION
- 7.0 LIQUIDATED DAMAGES
- 8.0 MAINTENANCE CONTINUITY
- 9.0 ONGOING PERFORMANCE REQUIREMENT
- 10.0 RELOCATION OF EQUIPMENT
- 11.0 RETURN OF EQUIPMENT
- 12.0 SPARE PARTS
- 13.0 SUPPLIES
- 14.0 TECHNICAL SERVICES
- 15.0 TRAINING

STATEMENT OF PURPOSE: The Hardware Rider provides terms and conditions relating to acquisition of data processing hardware. The Hardware Rider is applicable to all Data Processing Agreements, which involve the acquisition of data processing hardware.

1.0 ACCEPTANCE/STANDARD OF PERFORMANCE:

A standard of performance must be met before any of the equipment is accepted by the State. It is also applicable to any replacement or substitute machines which are added or field modified after the equipment has completed a successful performance period.

- 1.1 The performance period shall begin when the State notifies Contractor in writing that acceptance testing may commence and shall end when the equipment has met the standard of performance for a period of thirty (30) consecutive days. The performance period will determine whether the following acceptance criteria are met:
- a. Equipment operates in conformance with Contractor's technical specifications and functional descriptions.
 - b. Equipment meets the specifications and performs the functions as contained in the State's solicitation document.
 - c. Equipment is capable of running on a repetitive basis using a variety of live data, as supplied by the State, without failure.
 - d. Equipment is capable of meeting the State's performance requirement as expressed in the State's solicitation document.
 - e. Equipment does not require modifications to other operational systems and does not cause performance degradation of other systems operating on the State's computing system(s) and network(s).

Equipment must operate at an effectiveness level of 96% or more. (See items 1.5 through 1.10 below.)

- 1.2 In the event the equipment does not meet the standard of performance during the initial thirty (30) consecutive days, the standard of performance test shall, at the option of the State, continue on a day-to-day basis until the standard of performance is met for a total of thirty (30) consecutive days.
- 1.3 If the equipment fails to meet the standard of performance after ninety (90) calendar days, from commencement of acceptance testing, the State may, at its option, terminate this Agreement without penalty, request replacement equipment or continue the performance test. Contractor shall be liable for all inbound and outbound preparation and shipping costs for equipment returned pursuant to this provision. The State's option to terminate this Agreement shall remain in effect until such time as a successful completion of the performance period is attained.
- 1.4 The date of acceptance shall be the first day after the completion of the successful performance period and shall be the first day that authorized charges will be paid.
- 1.5 The effectiveness level for equipment acquired under this Agreement is computed by dividing the operational use time by the sum of that time plus system failure downtime.
- 1.6 Operational use time for performance testing for the equipment acquired under this Agreement is defined as the accumulated time during which the equipment is in actual use.
- 1.7 Equipment failure downtime is that period of time when the equipment is unavailable due to equipment malfunction.
- 1.8 During any period of equipment downtime, the State may use operable equipment when such action does not interfere with maintenance of the inoperable equipment.
- 1.9 Downtime for each incident shall start from the time the State makes a bona fide attempt to contact Contractor's designated representative until equipment is returned to the State in proper operating condition.

1.10 During the performance period for equipment, a minimum of twenty hours of operational use time with productive or simulated work will be required as a basis for computation of the effectiveness level. However, in computing the effectiveness level the actual number of operational use hours shall be used when in excess of the minimum of twenty hours.

2.0 ACCESS TO EQUIPMENT:

Contractor, its agents or employees shall have full access to the equipment at reasonable times when State offices are open to inspect the equipment or observe its use upon first giving notice to the State of Contractor's intent to perform such inspection.

3.0 DOCUMENTATION AND OPERATING MANUALS:

Contractor shall provide, at no additional charge, operating manuals, which describe equipment capabilities, its operation, malfunction identification and troubleshooting procedures. One (1) copy of these manuals will be furnished for each individual piece of equipment ordered by the State. Manual updates or revisions published by the Contractor shall be provided free of charge. Contractor agrees that the State may make such additional copies of supplied documentation as are needed for use by State employees.

4.0 EMERGENCY EQUIPMENT:

Contractor agrees to make every reasonable effort to assist the State in obtaining the use of equipment compatible with that used by the State to meet emergencies such as a major system or equipment failure or loss which extends or is expected to extend beyond twenty-four (24) hours. The State, at its option, may accept or reject the offer of use of emergency equipment from the Contractor.

5.0 ENGINEERING CHANGES AND/OR FIELD MODIFICATIONS:

Contractor sponsored modifications and/or engineering changes shall be made with the consent of the State at no additional charge. The State reserves the right at all times to schedule these Contractor sponsored modifications and/or engineering changes to minimize the impact on the daily operations of the State. Contractor warrants that, to their knowledge, installation of such engineering changes and/or field modifications as are required or recommended from time to time, shall not cause the performance of the equipment modified to degrade below the standard of performance established for acceptance of the equipment or as described in Contractor's technical specifications and accepted by the State. Liquidated damages as provided for in section 8.3 of this Hardware Rider will be assessed by the State if engineering changes and/or field modifications result in an unacceptable performance level for the equipment.

6.0 INSTALLATION:

The State agrees to have the equipment installation site prepared in accordance with provider's written specifications prior to the installation date. The State shall provide access to the installation site to enable Contractor to plan the installation. A complete minimum disruption installation plan for installing equipment must be provided by Contractor which requires no prime shift system downtime and which is flexible enough to meet the State's operational requirements. The plan must detail all activities required to successfully install and operate the equipment. This includes, for example, I/O generation, emulator generation, security authorization, and operating instructions. Except for equipment specifically designated in Contractor's proposal as customer set-up or unless otherwise specified in the State's solicitation document, Contractor shall be responsible for unpacking, uncrating and installing the equipment, including the installation of all necessary cabling, connection with power, utility and communications services, and in all other respects making the equipment ready for operational use. Upon completion, Contractor shall provide written certification to the State that each unit of equipment has incorporated within it all of the Contractor's current engineering changes and that the equipment is ready for acceptance testing. For those units of equipment designated as customer set-up in Contractor's response to the State's solicitation document, the State shall:

- unpack each unit of equipment;
- inspect each unit of equipment for damaged or missing items;
- perform the physical set-up and connections as prescribed by Contractor;

- provide any data communications equipment that may be required in order for the equipment to function;
- install all required programming aids;
- utilize equipment validation and diagnostic tests as prescribed by Contractor to verify that the equipment functions properly;
- notify Contractor of equipment that is missing, damaged or apparently malfunctioning;
- notify Contractor within five (5) working days after successful installation that equipment is being tested for acceptance.

At the State's request, subject to the charges listed in the Contractor's response to the State's solicitation document, Contractor shall assist in the installation of equipment designated as customer set-up.

7.0 LIQUIDATED DAMAGES:

The State declares, and Contractor acknowledges, that the State may suffer damages due to lack of performance of the terms and conditions of this Agreement by Contractor. Since it is impractical and extremely difficult to fix the actual damage sustained in the event of any such nonperformance, the State and Contractor, therefore, presume that in the event of any such nonperformance, the amount of damage which will be sustained from the nonperformance will be the amount set forth in this section and they agree that, in the event of any such nonperformance, the Contractor shall pay that amount as liquidated damages and not as a penalty. Liquidated damages shall be the exclusive damages available to the State in respect to subparagraphs 8.1, 8.2 and 8.3. Amounts due the State as liquidated damages may be deducted by the State from any money payable to Contractor and any amount outstanding over and above the amounts deducted from invoices will be promptly tendered by check by Contractor to the State.

The State shall notify Contractor in writing of any claim for liquidated damages pursuant to this section on or before the date when the State deducts such sums from money payable to Contractor and, in any case, within thirty (30) days after Contractor's failure to perform in accordance within the terms and conditions of this Agreement. Delay in reporting such claim to Contractor will void any claim for liquidated damages.

Except with respect to defaults of subcontractors, Contractor shall not be liable for liquidated damages when delays arise out of cause beyond the reasonable control and without the fault or negligence of Contractor. Delays due to causes of Force Majeure (which are outside of the control of both parties and could not be avoided by exercise of due care) or due to the responsibility of the State or other contractors of the State shall extend the dates on a day for day basis; but in every case the delay must be beyond the reasonable control and without the fault or negligence of Contractor. Delays caused by the default of a subcontractor, when such default arises out of causes beyond the control of both Contractor and the subcontractor and without the fault or negligence of either of them, shall extend the dates on a day for day basis, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule.

7.1 DELIVERY OF EQUIPMENT:

If Contractor does not deliver equipment, as promised, the contractor shall pay as liquidated damages the State may charge; \$50/day for desktops and \$200/day for servers; in critical situations. The State will inform the Contractor when the equipment being requested is critical and that failure may cause damages to be assessed. This process may also be used when there are repeated deliveries being missed by the Contractor. Changes to requested delivery dates may be made if mutually agreed upon by the State and Contractor without liquidated damages being applied.

Contractor has the right to reject and return any order issued by the State within ten (10) days of the date of the order if it cannot accept the State's delivery schedule or Contractor cannot make delivery within thirty (30) days. In the event that Contractor rejects the State's order, liquidated cannot be invoked.

7.2 SUPPORT REQUIREMENTS:

If the support performance requirements are not met after ninety calendar (90) days from commencement of the service, the State shall be presumed to have sustained damage in the amount of: 10% of the service cost per day/device for each day over the ninety or \$500 maximum per day, which ever is less. If the support performance requirements are not met after ninety calendar (90) days from commencement of the service, the State shall be presumed to have sustained damage in the amount of: 10% of the service cost per day/device for each day over the ninety or \$500 maximum per day, which ever is less.

7.3 WARRANTY REPAIR TIME:

If Contractor fails to complete warranty repairs within reasonable times, the parties agree that the State shall have sustained damages in the amount of \$50/ for desktop or laptop and \$300 for per server for which warranty repairs are not completed within reasonable time. This may be applied at the State's option for each complete day that the equipment is inoperative.

7.4 INSTALLATION OF EQUIPMENT:

- a. If Contractor does not install any of the equipment designated as Contractor set-up in Contractor's proposal on or before the installation date specified in the order, Contractor shall pay the State, as fixed and agreed liquidated damages for each calendar day between the date specified for installation and the actual installation date for such equipment, the greater of \$200.00 or 1/30th of the monthly charges (lease, rental or lease/purchase) or 1/200th of the purchase price applicable to each machine and feature. In no event shall Contractor be obligated for more than one hundred eighty (180) calendar days.
- b. If some, but not all, of the equipment specified in an order is installed and ready for use by the installation date specified in this agreement and the State uses any such installed equipment, liquidated damages shall not accrue against the equipment used.
- c. Substitute Equipment: If Contractor provides substitute equipment acceptable to the State on or before the installation date specified in the order, liquidated damages shall not apply to the equipment for which substitute equipment was provided.
- d. If Contractor does not deliver and/or install all of the equipment and any specified software, including special features and accessories included on the same order, and, as a result, no portion of the total system is ready for use on the installation date, daily liquidated damages shall be paid by Contractor. These daily liquidated damages shall be the greater of \$200.00 per item, 1/200th of the total purchase cost of the order or 1/30th of the monthly charges (lease, rental, or lease/purchase).
- e. Replacement Equipment: If Contractor fails to install all of the equipment identified herein within thirty (30) days of the installation date specified in an order, including special features and accessories, the State may upon written notice to Contractor obtain replacement equipment from another provider. In this event Contractor shall be liable for the greater of: (i) liquidated damages from the installation date specified herein until replacement equipment is installed and ready for use or (ii) liquidated damages for one hundred eighty (180) days from the installation date.

7.5 ONGOING PERFORMANCE:

If Contractor does not meet the Ongoing Performance Requirement specified in Section 10.0 of this Hardware Rider, Contractor shall pay the State, as fixed and agreed liquidated damages for each month in which equipment failed to perform at an effectiveness level of 96% the greater of one month's monthly charge for the equipment which was subject to nonperformance or 4% of the purchase price of all equipment which was subject to nonperformance.

The State shall maintain appropriate daily records of the ongoing performance level of equipment that is the subject of this Agreement. If Contractor believes that equipment is operating as certified, the State shall offer such records as evidence in assessing damages.

8.0 MAINTENANCE CONTINUITY:

Contractor agrees to make available maintenance services to meet the State's ongoing performance requirement for as long as the equipment is utilized by the State. Such services shall be available in accordance with Contractor's generally listed prices, but shall in no event exceed current prices plus 5% per year for each year after the date of acceptance of the equipment.

If Contractor is unable to provide maintenance services pursuant to this Agreement and in the State's sole opinion is unlikely to resume providing maintenance services to meet the State's ongoing performance requirement, then Contractor or its receiver or trustee shall provide the following items to the State.

- 8.1 All information necessary for the State to perform or to have such maintenance service performed including, but not limited to, logic diagrams, maintenance manuals, system and unit schematics.
- 8.2 A listing of suppliers capable of supplying necessary spare parts and equipment support.
- 8.3 Available information adequate to permit the State to have spare parts manufactured elsewhere.
- 8.4 A listing of spare parts and their frequency of use to enable the State to create a centralized inventory of spare parts.

Any information in items 8.1, 8.2, 8.3, and 8.4 above which is identified by Contractor as proprietary information shall be maintained in confidence by the State except where disclosure to a third party is necessary in order for the State to continue the maintenance service; however, any third party to whom disclosure is made pursuant thereto shall agree to hold such proprietary information in confidence and to make no further disclosure thereof. Further, the State agrees that any such proprietary information shall be used solely to perform the Contractor's obligations hereunder and shall be returned to Contractor upon completion of such use.

9.0 ONGOING PERFORMANCE REQUIREMENT:

Any equipment installed as a result of this Agreement must perform at an effectiveness level of 96% each month following acceptance during the effective life cycle of the equipment as specified in the State's solicitation document and as provided for in Contractor's response with respect to costs.

Should any equipment fail to meet this standard of performance, the State may at its option, choose to liquidate the damages it suffers as a result of equipment failure. In the event that equipment is inoperative, due to equipment failure, and the effectiveness level is below 96% of the total operational use time for three (3) consecutive calendar months, the State reserves the right to terminate this Agreement without penalty or to require Contractor to replace the equipment. As applicable, the purchase option credits for any replacement equipment shall not be less than the credits accrued from the date of acceptance of the original equipment, regardless of whether the replacement is made at the request of the State or for the convenience of Contractor.

10.0 RELOCATION OF EQUIPMENT:

- 10.1 The State reserves the right to move the equipment acquired under this contract from one State office to any other State office within the State.
- 10.2 The State will prepare a relocation site that conforms to the Contractor's specifications in accordance with other provisions of this Rider.
- 10.3 The State shall arrange and pay for all transportation, rigging, drayage and any other relocation charges.
- 10.4 Rearrangement of equipment within the same office for State convenience shall be entirely at State expense. Contractor may provide paid assistance and supervision.
- 10.5 The State shall notify Contractor at least thirty (30) days in advance of the relocation of any equipment which is not designated as customer set-up in Contractor's response to the State's solicitation document.

Contractor shall be responsible for disconnecting, packing, and crating this equipment for shipping as well as all tasks associated with installation as detailed elsewhere in this Hardware Rider subject to charges as specifically stated in Contractor's response to the State's solicitation document.

11.0 RETURN OF EQUIPMENT:

- 11.1 If equipment is returned to Contractor for failure to fulfill contractual obligations, the following procedure will be used:
- a. Within twenty (20) days of written notification Contractor will prepare equipment for removal and shall provide the State with the required shipping instructions.
 - b. Within thirty (30) days following preparation of equipment for shipping, the State shall ship the equipment in accordance with instructions from Contractor.
 - c. All shipping cost will be borne by Contractor.
- 11.2 If equipment is returned to Contractor for any other reason, the State shall be responsible for all costs associated with preparation of equipment for shipping and for shipping costs to Contractor's nearest location.

12.0 SPARE PARTS:

Contractor agrees to furnish to the State price lists and instructions for ordering spare parts for all equipment proposed in the Contractor's response to the State's solicitation document. Contractor agrees that these spare parts will be available, either to the State or to a third-party maintenance contractor retained by the State for the purpose of maintaining Contractor's equipment if the State chooses not to contract for maintenance service with Contractor.

13.0 SUPPLIES:

Contractor's prices do not include operational supplies (e.g., paper, tape, etc.) unless such supplies are specifically identified. All supplies used by the State shall conform to Contractor's published specifications provided to the State at the time of equipment installation. The State reserves the right to acquire such supplies from any provider of its choice.

14.0 TECHNICAL SERVICES:

Contractor's technical personnel shall be available to assist the State in implementation, review, and improvement of existing data processing systems and to advise on programming, development, and implementation of new systems involving Contractor's equipment. Charges, if any, for this assistance have been included in Contractor's response to the State's solicitation document and these charges will increase by no more than 5% per year. Any actual changes in the charges for technical services will require mutual agreement and are subject to the Pricing and Discount provisions of the General Terms and Conditions of this Agreement.

15.0 TRAINING:

Contractor shall provide continuing training for personnel to achieve the level of proficiency necessary to support the State's use of equipment provided by Contractor. Charges, if any, for training have been included in Contractor's response to the State's solicitation document and these charges will increase by no more than 5% per year. Any actual changes in the charges for training will require mutual agreement and are subject to the Pricing and Discount provisions of the General Terms and Conditions of this Agreement.